

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4368 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 & 2 - Yes

3 to 5 - No

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P K VALERA

Versus

UNION OF INDIA  
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Appearance:

BP TANNA for Petitioner

MR RJ OZA for Respondent No. 1

MR DA BAMBHANIA,ASSTT. GOVT.PLEADER for Respondent No. 2  
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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 17/01/98

ORAL JUDGEMENT (C.K.Thakkar,J.)

In this petition, the petitioner has raised a point as to the applicability of the decision of the Supreme Court in L. Chandra Kumar V. Union of India; AIR 1997 SC 1125.

#. To appreciate the controversy raised in this petition, few relevant facts may now be stated. The petitioner was sought to be retired on the basis of his date of birth recorded with the respondent authorities as 1st February, 1939. According to the petitioner, his date of birth shown in service record was not correct and there was a mistake in recording it. Since he was an employee of the Central Government, in accordance with the provisions of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act'), he approached Central Administrative Tribunal ('CAT' for short). He filed an application being Original Application No.101 of 1994 for getting a declaration that his correct date of birth was September 3, 1942 and for consequential reliefs on that basis. CAT, however, did not uphold the contention of the petitioner and by an order dated June 21, 1995 (Annexure Z to the petition) dismissed the petition. In the operative part of the order, it was stated:-

"Taking into account the facts and circumstances of the case, we hold that the application is devoid of any merit and hence, it is dismissed. However, there is no order as to costs."

#. Against the said order, the petitioner filed an application for review being Review Application No.42 of 1996. That application was filed exactly after one year, i.e. on June 21, 1996. To recall, the order was passed by CAT on June 21, 1995. When the review application came up for hearing before CAT, it was dismissed on the ground of limitation as also on merits. The Tribunal observed in its order dated October 30, 1996:-

"This Review Application has been filed by the applicant more than one year after the judgment in OA 101/94 was delivered, it deserves to be dismissed on that ground alone. On going through the Review Application, we find that even on merits, there is no case for review of our judgment dated 21-6-1995 in OA 101/94 as there is no apparent error on the face of the record of the judgment. Accordingly, Review Application is dismissed."

In view of the disposal of the R.A., M.A.  
611/96 does not survive."

#. Being aggrieved by an order passed by CAT, the petitioner approached the Hon'ble Supreme Court by filing Special Leave Petitions (Civil) No.5210-5211 of 1997 on 31st January, 1997. The said matters came up for hearing before the Apex Court on March 20, 1997 and following order was passed:

"The Special Leave Petitions are dismissed."

#. After SLPs were dismissed and leave was refused by the Hon'ble Supreme Court, the petitioner approached this Court by filing the present petition. In paragraph 8 of the petition, the petitioner prays:-

- (a) This Hon'ble High Court may be pleased to issue a directive to the Respondent union of India to change the date of birth of the applicant from 1.2.1939 to 3.9.1942 and grant all consequential benefits on the basis of such changed date of birth.
- (b) Pending admission and final disposal of this petition, the petitioner may not be retired on the basis of the birth date recorded as 31.12.1939 and to be continued by granting the status quo.
- (c) Award the cost of this application to the petitioner.
- (d) Grant any other and further reliefs as would be deemed just and proper in the interest of justice.

#. Initially notice was issued by a learned Single Judge of this Court on June 20, 1997 by making it returnable on July 4, 1997. Thereafter, Rule was issued on September 4, 1997. Now the matter is called out for final hearing.

#. We have heard Mr.B.P.Tanna, learned counsel for the petitioner, Mr.R.J.Oza, learned counsel for respondent No.1 and Mr.D.A. Bambhania, Additional Government Pleader for respondent No.2.

#. Mr.Tanna submitted that after the judgment of a larger Bench of seven Judges of the Hon'ble Supreme Court in L. Chandra Kumar Vs. Union of India and others, AIR 1997 S.C. 1125, any order passed by CAT is subject to jurisdiction of a High Court under Article 226/227 of the Constitution of India. The Supreme Court in no uncertain terms declared that all cases decided by CAT would be subject to jurisdiction of a High Court. He submitted that considering the Constitution Bench decision in S.Sampat Kumar Vs. Union of India, AIR 1987 SC 386 in the light of various provisions of the Constitution, the larger Bench observed that a person aggrieved by a

decision of CAT has first to approach a High Court by invoking Article 226/227 of the Constitution and only thereafter, he/she can approach the Supreme Court under Article 136 of the Constitution. He, therefore, submitted that a petition filed by the petitioner is maintainable and should be decided on merits.

#. A preliminary objection was raised on behalf of the respondents that as per the law laid down in L. Chandra Kumar, the present petition is not competent and maintainable. In this connection, our attention was invited by the learned counsel for the respondents that in the instant case, CAT decided the application of the petitioner on June 21, 1995 and that is the material date for invoking the jurisdiction of this Court. If on that day, this Court had no jurisdiction to entertain the petition filed against an order passed by CAT, the present petition cannot be entertained and must be dismissed only on that ground. It was further argued that the Review Application was also dismissed on October 30, 1996 and even on that day, there was no decision of the Apex Court in L. Chandra Kumar. Finally, it was submitted that when SLP was preferred by the petitioner and was dismissed by Hon'ble Supreme Court, it is not open to this Court to entertain this petition as the order passed by CAT was merged in the order passed by the Supreme Court.

##. Mr.Tanna drew our attention to relevant paragraphs in L. Chandra Kumar particularly to paragraph 94. The said para reads:-

"The directions issued by us in respect of making the decisions of Tribunals amenable to scrutiny before a Division Bench of the respective High Courts will, however, come into effect prospectively i.e. will apply to decisions rendered thereafter. To maintain the sanctity of judicial proceedings, we have invoked the doctrine of prospective over-ruling so as not to disturb the procedure in relation to decisions already rendered."

##. Mr.Tanna attempted to categorise the cases in which a petition decided by CAT is maintainable. According to him, there may be following categories of cases:-

- (i) Cases arising post Sampata Kumar and pre L.Chandra Kumar;
- (ii) Post L. Chandra Kumar cases;
- (iii) Decisions which have become final in the sense that

either no appeal and/or application was preferred or the matters which had gone upto the Apex Court and decisions have been confirmed on merits by recording reasons; and

(iv) Orders passed by the Supreme Court after L. Chandra Kumar not on merits.

##. According to Mr. Tanna, if the proceedings were finalised, an aggrieved person cannot seek assistance from this Court invoking L. Chandra Kumar to reopen the proceedings by a High Court. In other words, settled matters do not get unsettled and the above observations of the Supreme Court must be read as such.

##. In the instant case, after CAT decided the application against the petitioner, he filed a Review Application and against that order, he approached the Supreme Court. Since Special Leave Petition was not dismissed on merits by recording reasons, it would not create a bar of res judicata and/or estoppel. The petition came up for hearing on March 20, 1997, i.e. after two days of the pronouncement of the judgment by the Supreme Court in L. Chandra Kumar. He, therefore, submitted that the right got accrued in favour of the petitioner with effect from March 18, 1997 with the pronouncement of judgment in L. Chandra Kumar. When the Supreme Court decided that any person aggrieved by an order of CAT would approach a High Court by invoking Article 226/227 of the Constitution of India, the present petition was maintainable and hence, it ought to be decided on merits. He submitted that the petitioner has a good case and the impugned action deserves to be quashed and set-aside.

##. We are of the view that the petition filed by the petitioner is not maintainable in view of unequivocal declaration of law by the Apex Court in L. Chandra Kumar. To us, the directions issued by their Lordships in paragraph 94 of L. Chandra Kumar are explicitly clear and leave no room of doubt that this Court has jurisdiction and can entertain only those cases which came to be decided by CAT after pronouncement of the judgment in L. Chandra Kumar, i.e. on or after March 18, 1997. The words "The directions issued by us in respect of making the decisions of the Tribunals amenable to scrutiny before a Division Bench of the respective High Courts will, however, come into effect prospectively, i.e. will apply to decisions rendered hereafter" make it more than clear that if a decision is rendered by a Tribunal before March 18, 1997, a High Court has no jurisdiction to exercise powers under

Article 226/227 of the Constitution.

##. In the instant case, the Tribunal decided the main matter (i.e. O.A.101 of 1994) on March 21, 1995 and even Review Application was dismissed on October 30, 1996. Thus, both the orders passed by CAT in Original Application and in Review Application were passed before 18th March, 1997. True it is that against the order passed by CAT in October, 1996, the petitioner approached the Supreme Court by filing Special Leave Petition which was dismissed after the decision in L. Chandra Kumar. In our opinion, however, that is not the material date so far as the jurisdiction of this Court under Article 226/227 of the Constitution is concerned. The law, in our opinion, is clear and unambiguous on the point.

##. For the foregoing reasons, we are of the definite opinion that this Court has no jurisdiction under Article 226/227 of the Constitution of India. As the petition is not maintainable, we are disposing it only on that ground. In view of our conclusion that the petition is not competent, we express no opinion as to whether an order passed by the Hon'ble Supreme Court in SLP (Civil) No.5210-5211 of 1997 would or would not create res judicata and/or estoppel. Similarly, we also do not express any opinion on merits of the matter. The petition is accordingly dismissed. In the facts and circumstances of the case, no order as to costs.

Sd/-

(C.K.Thakkar,J.)

Sd/-

17-1-1998 (R.P.Dholakia,J.)

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